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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/997,604	11/29/2001	Hiroshi Nemoto	791_065	5235

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EXAMINER

TSANG FOSTER, SUSY N

ART UNIT PAPER NUMBER

1745

DATE MAILED: 01/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/997,604

Applicant(s)

NEMOTO ET AL.

Examiner

Susy N Tsang-Foster

Art Unit

1745

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 05 January 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 10-23.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

Continuation of 5. does NOT place the application in condition for allowance because: With respect to applicant's arguments regarding the 35 USC 112, first paragraph rejections for claims 12 and 19, the Examiner is unpersuaded for reasons given in the previous final office action. With respect to applicant's arguments that the JP 08-217452 reference does not disclose substantially octahedral shape positive electrode active material, the Examiner disagrees with the applicant's analysis of the reference since the reference at paragraphs 76 and 107 specifically disclose that the primary particles are octahedral in shape which meets the limitation of substantially octahedral as claimed in the instant claims. As seen in Fig. 4 of the JP 08-217452 reference, the shapes of the primary particles are identical to the shapes of the primary particles shown in Fig. 1 of the present application. With respect to art rejections of record based on Zhong et al. (US Pat. No. 5,631,104), applicant asserts that the conditions and formulas in the methods of Zhong et al. ('104) are not identical to those of the present invention and would not produce primary particles having substantially octahedral shape and that the present specification at page 11, lines 5-10 do not inherently result in production of positive electrode active materials having the characteristics recited in the present claim. In response, the applicant has not disprove the Examiner's inherency arguments of the Zhong et al. ('104) reference by using arguments that contradict applicant's own specification which states at page 11, lines 5-10 that "[p]roduction of the positive electrode active material of the present invention is conducted by firing a raw material mixture consisting of given proportions of salts and/or oxides of various element(s) and an addition element(s)], in an oxidizing atmosphere at 700-900 C for 5 to 50 hours." The Examiner provided detailed reasons in the previous final office action why the methods of Zhong et al. ('104) are identical to applicant's disclosed method and would inherently yield the product having the claimed properties. Furthermore, Zhong et al's ('104) formula in the abstract encompasses those claimed by applicant as stated in the previous office action. It is applicant's burden to provide experimental proof that the methods of Zhong et al. ('104) do not yield primary particles having substantially octahedral shape. Applicant made similar assertions regarding the art rejections based on Manev (US 5,961,949) of record and Examiner remains unconvinced for similar reasons given for art rejections based on the Zhong et al ('104) reference.

Any inquiry concerning this communication or earlier communications should be directed to examiner Susy Tsang-Foster, Ph.D. whose telephone number is (571) 272-1293. The examiner can normally be reached on Monday through Friday from 9:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Ryan can be reached at (571) 272-1292.

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

st/



Susy Tsang-Foster  
Primary Examiner  
Art Unit 1745